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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re J.S. et al., Persons Coming Under  
the Juvenile Court Law.**

**CONTRA COSTA COUNTY  
CHILDREN AND FAMILY SERVICES  
BUREAU,**

**Plaintiff and Respondent,**

**v.**

**Irene N.,**

**Defendant and Appellant.**

**A148567**

**(Contra Costa County  
Super. Ct. Nos.  
J14-00447, J14-00448,  
J14-00449, J14-00450)**

Irene N. (mother) appeals from the juvenile court's termination of her parental rights as to four of her children following a Welfare and Institutions Code section 366.26 (.26 hearing).<sup>1</sup> She contends the court erred by failing to apply the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)).

We disagree and affirm.

<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code. Presumed father Alberto S. (father) is not a party to this appeal and is mentioned only where necessary.

## FACTUAL AND PROCEDURAL BACKGROUND

As relevant here, mother and father (collectively, parents) have four children: Jennifer S., born in 2004; Crystal S., born in 2006; A.N., born in 2009; and Alberto S.-N. (Alberto), born in 2010 (collectively, children). All four children have special education needs; two children have diagnosed mental health conditions.

### *Detention, Jurisdiction, and Disposition*

In April 2014, the Contra Costa County Children and Family Services Bureau (the Bureau) filed a petition alleging the children came within section 300, subdivision (b). As amended, the petition alleged: (1) the children were at substantial risk of suffering serious physical harm because parents “failed to provide a safe and sanitary home with adequate provisions”; and (2) Jennifer and Crystal had “extensive absences and tardies at school due to the parents’ inability to get the [children] to school on a regular basis.” The court detained the children and placed them in foster care. Parents submitted to the amended petition and the court determined the children came within section 300, subdivision (b).<sup>2</sup>

The Bureau’s dispositional report recommended removing the children from parental custody and ordering reunification services. The family was “disenfranchised from mainstream society” and mother was illiterate and possessed “suspected . . . intellectual challenges[.]” Parents were homeless and finding stable work was “problematic” because of their “undocumented status.” Before the dispositional hearing, mother was arrested for possessing drug paraphernalia and being under the influence. At

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<sup>2</sup> The family was evicted after parents lost their jobs and could not pay rent. When the Bureau filed the section 300 petition, the family was living in an unclean motel room smelling of mold and urine. The children had lice and complained of being hungry. Parents received several referrals from 2010 to 2013 for “general neglect.” These referrals noted the family was “homeless and struggling just to get by” and that mother “failed to meet the medical needs of the children despite receiving assistance from various community resource individuals.” In a previous dependency, parents received family maintenance services. Mother’s methamphetamine use was a factor in that dependency.

the dispositional hearing, mother agreed to participate in substance abuse treatment; the court determined the children came within section 300 and ordered reunification services.

### *Review Hearings*

According to the Bureau's six-month review report, mother had enrolled in an outpatient drug treatment program but engaged in prostitution to buy gifts for the children. Parents visited the children regularly, but their initial supervised visits "were difficult because the parents would begin to cry about 15 minutes before the visits were scheduled to end. This would in turn make the children cry and not want to separate from their parents." Parents argued with each other during at least one visit. At the six-month review hearing, the court continued reunification services.

The Bureau's 12-month review report recommended terminating reunification services and ordering a long-term plan of foster care for the children "while a unified permanent plan is identified[.]" Mother "struggled with her addiction" — she missed drug tests in late 2014, tested positive for methamphetamine in February 2015, and left the substance abuse treatment program. Mother had "good interactions" during supervised visits, but cancelled two visits for health reasons and visited the children only once per month.

The Bureau opined mother was "working hard to be involved in [the] children's lives" but that additional reunification services would not provide her with a "significant probability of gaining the resources, stability, and ability to care for the . . . children, all of whom struggle with behavioral issues, speech and language delays and disabilities, and have active mental health interventions in place." The children were bonded with mother, and the Bureau expressed hope they would have "ongoing contact" with her if the court ordered a guardianship or adoption as the children's permanent plan. At the 12-month review hearing, parents agreed with the Bureau's recommendation. The court terminated reunification services, ordered long-term foster care as the children's permanent plan, reduced parents' visits to once a month, and set a permanency plan review hearing.

In its permanency plan review report, the Bureau recommended continuing long-term foster care and setting a .26 hearing. Parents “maintained regular contact and visitation,” but the children experienced “tantrums, behavioral outbursts . . . and fits of crying following visitation.” Mother completed a residential drug treatment program, had “pick[ed] up part time work[,]” and was renting a room with father. The Bureau noted mother’s “significant progress” but recommended setting a .26 hearing to “consider the permanent plan of adoption.”

According to the Bureau, the children were thriving in their foster care placement: their behavior, mental health, and speech had “stabilized significantly” and their caregiver wanted to adopt them. Jennifer “enthusiastically” agreed to live with her current caregiver until “she is a grown up” and referred to her caregiver as one of her “two” mothers. Crystal was happy to see parents during visits but also appeared “very content with the status quo.” The two younger children, A.N. and Alberto, struggled with the uncertainty of the current permanent plan. At the permanency plan review hearing, the court continued the children’s placement and set a .26 hearing.

#### *Combined Section 388 and .26 Hearing*

The Bureau’s May 2016 .26 report recommended terminating parental rights and making adoption the permanent plan. The children were doing well in their current placement; one of the therapists commended the children’s caregiver for “the amazing work she has done with the children.” According to the Bureau, parents visited the children once a month and were “loving, engaging, and attentive[.] [¶] There is no doubt the parents love their children, but the children do not have a significant parent/child relationship that would outweigh the benefits of legal permanency for the children.”

At the .26 hearing, the social worker testified the children were adoptable and their current caregiver wanted to adopt them. The children were bonded to the caregiver, referred to her as “mommy,” and would benefit from having the caregiver as a legal parent. Mother consistently visited the children and behaved appropriately. The children enjoyed the visits and shared a loving and emotional bond with mother. The children did not, however, have difficulty leaving the visits, and did not ask the social worker when

they would return to parental custody. After visits, the children were “disregulated” and Alberto, the youngest child, had a “difficult time” with his emotions. The children’s therapists supported the Bureau’s plan.

The court accepted stipulated testimony that mother completed 60 days of substance abuse treatment, was taking parenting classes, and continuing outpatient substance abuse treatment. Mother’s counsel conceded mother had substance abuse issues, and that the children’s needs were “obviously and clearly being met by their caretaker, where they’ve been for quite some time.” Counsel, however, noted the “ongoing relationship” between mother and the children and urged the court to order guardianship as the permanent plan.

The Bureau argued the beneficial relationship exception to termination of parental rights did not apply, and the court agreed. It explained “the love that the parents have for the children, and the children have for the parents, doesn’t outweigh given the facts that have been presented to me, the long-term best interests of the children. And in fact, it’s . . . to the contrary. [¶] . . . [¶] [T]he best interest of the children is to be adopted.” The court encouraged the children’s caregiver to allow mother to see the children “when it’s appropriate.” The court found clear and convincing evidence the children were adoptable and terminated parental rights.<sup>3</sup>

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<sup>3</sup> Shortly before the section .26 hearing, mother filed a section 388 petition (form JV-180) requesting that the court select foster care as the children’s permanent plan and order regular supervised visitation. Among other things, mother claimed she was “appropriate” during visits, that she had a loving, engaged, and emotional bond with the children, and that they would benefit from “long term contact” with her. In opposition, the Bureau argued long-term foster care was not in the children’s best interest, in part because the children’s caregiver wanted to adopt the children, and they “provided thumbs up to the idea of living as a family until they grow up. The children are aware they have two mommies and that the current caregiver is the mommy that will be taking care of them until they grow up.” At the conclusion of the .26 hearing, the court denied mother’s section 388 petition, concluding she had not shown a sufficient change in circumstances. Mother does not challenge the denial of her section 388 petition.

## DISCUSSION

Mother contends the court erred by declining to apply the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). Under section 366.26, subdivision (c)(1), the court must terminate parental rights if it finds the child is likely to be adopted unless the parent establishes, by a preponderance of the evidence, one of the statutory exceptions applies. To establish the beneficial relationship exception, mother must demonstrate she “maintained regular visitation and contact” with the children and they “would benefit from continuing the relationship” with her. (§ 366.26, subd. (c)(1)(B)(i); *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.)

To determine whether the beneficial relationship exception applies, the juvenile court “balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The beneficial relationship exception is “difficult to make in the situation, such as the one here, where” mother has not “advanced beyond supervised visitation.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51 (*Casey D.*)) The beneficial relationship exception “may be the most unsuccessfully litigated issue in the history of law. . . . [I]t is almost always a loser.” (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) “We review a juvenile court’s order on the beneficial-relationship exception for substantial evidence” but would reach the same result applying the abuse of discretion standard of review. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 & fn. 7 [“some courts have applied” the abuse of discretion standard].)

Mother contends the children would benefit from continuing their relationship with her. We are not persuaded. To establish the beneficial relationship exception, mother was required to show “more than that the relationship [with the children] is

‘beneficial.’” (*Casey D.*, *supra*, 70 Cal.App.4th at p. 52, fn. 4.) She needed to demonstrate her relationship with the children promoted their well-being “‘to such a degree that it outweighs the well-being [they] would gain in a permanent home with new, adoptive parents.’ [Citation.]” (*Ibid.*) Mother failed to do so.

At the .26 hearing, the social worker testified the children were bonded to the caregiver and referred to her as “mommy.” “[T]he children were in a secure placement . . . with their . . . caregiver” (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166) and “provided thumbs up to the idea of living” with the caregiver “until they grow up. The children are aware they have two mommies and that the current caregiver is the mommy that will be taking care of them until they grow up.” The children did not have difficulty leaving visits with mother and did not ask the social worker when they would return to parental custody. After visiting mother, the children were “disregulated” and one of the children had a “difficult time” with his emotions. That the court encouraged the caregiver to allow mother to visit the children does not — as mother seems to contend — establish it was in the children’s best interest to continue the parental relationship.

This case is not like *In re S.B.* (2008) 164 Cal.App.4th 289. There, a three-year-old was removed from her father’s custody; the father immediately acknowledged his drug use, fully complied with his case plan, and remained drug free. (*Id.* at p. 298.) The child wanted to live with the father and became upset when visits ended. (*Id.* at p. 298.) The appellate court concluded the beneficial relationship exception applied. (*Id.* at pp. 298, 299.) *In re S.B.* is completely distinguishable and, in any event, is “confined to its extraordinary facts.” That case “does not support the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 558-559.) Mother’s reliance on *In re Brandon C.* (1999) 71 Cal.App.4th 1530 is similarly misplaced. In that case, there was ample evidence of benefit to the minors of continued contact with their mother. (*Id.* at pp. 1537-1538.) Here, the record supports the court’s conclusion that there would not be sufficient benefit

to the children. The children had a need for stability and security, a need only adoption could satisfy.

Viewing the evidence in a light most favorable to the judgment, we conclude the court did not err by concluding mother failed to establish the beneficial relationship exception. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166 [no error in declining to apply beneficial relationship exception where visits were supervised and children “were in a secure placement and were bonded with their current and prospective caregivers”]; *In re C.F.*, *supra*, 193 Cal.App.4th at pp. 555-556 [pleasant visits between the mother and the child, and the child’s sadness at the end of some visits, did not establish beneficial relationship exception]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418 [loss of “frequent and loving” contact with parent was insufficient to show detriment from termination of parental rights].)

#### DISPOSITION

The orders terminating Irene N.’s parental rights as to Jennifer S., Crystal S., A.N., and Alberto S.-N. are affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Bruiniers, J.